

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY BONANNO,

Plaintiff,

v.

MARTIN J. O'MALLEY,¹

Defendant.

No. 16-CV-1978 (KMK) (JCM)

ORDER ADOPTING REPORT AND
RECOMMENDATION

KENNETH M. KARAS, United States District Judge:

On March 16, 2016, Anthony Bonanno (“Plaintiff”) brought this case pursuant to 42 U.S.C. § 405(g), seeking judicial review of a decision by the Commissioner of Social Security to deny Plaintiff’s application for disability benefits. (Dkt. No. 1) Plaintiff retained Christopher James Bowes (“Mr. Bowes”) to represent him in this Action. On June 16, 2016, the Parties agreed to remand the claim for further administrative proceedings. (*See* Dkt. No. 9.) On October 13, 2016, the Court signed a stipulation between the Parties for attorneys’ fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, for \$1,400.00. (Dkt. No. 13.) On remand, the administrative law judge found Plaintiff was disabled and entitled to disability benefits. (Mem. in Supp. 2 (Dkt. No. 16).) The Social Security Administration issued a Notice of Award to Plaintiff on January 24, 2024. (*Id.*) On February 8, 2024, Mr. Bowes filed the instant motion seeking an award of attorneys’ fees in the amount of \$13,750.00 pursuant to 42 U.S.C. § 406(b). (*Id.* at 7.)

¹ Martin J. O’Malley is the current Commissioner of Social Security and is substituted for former Acting Commissioner Carolyn W. Colvin as the Defendant in this Action, pursuant to Federal Rule of Civil Procedure 25(d).

On March 27, 2024, the Court referred this case to Magistrate Judge Judith C. McCarthy (“Judge McCarthy”). (See Dkt. No. 13.) On June 27, 2024, Judge McCarthy issued a thorough Report and Recommendation (“R&R”), recommending that Mr. Bowes’ motion be granted in part and denied in part. (See R&R (Dkt. No. 50).) Specifically, Judge McCarthy recommended Mr. Bowes be awarded \$15,150.00, as opposed to the requested amount of \$13,750 that represents the total Section 406(b) fee amount minus the EAJA fee that Mr. Bowes is required to refund to Plaintiff. (R&R 8–9.) Judge McCarthy noted that this “netting approach is disfavored” as it relates to EAJA and Section 406(b) fees. (*Id.* at 8 (quoting *Johnson v. Kijazaki*, No. 20-CV-2630, 2022 WL 17718336, at *6 (S.D.N.Y. Dec. 15, 2022).) No objections were filed.²

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Torres v. Golden Home Furniture Inc.*, No. 20-CV-4789, 2023 WL 3791807, at *1 (S.D.N.Y. June 2, 2023) (citing *Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010)); *see also ExxonMobil Oil Corp. v. TIG Ins. Co.*, No. 16-CV-9527, 2022 WL 17070111, at *1 (S.D.N.Y. Nov. 17, 2022) (same). The Court has reviewed the R&R and, finding no substantive error, clear or otherwise, adopts the R&R in its entirety.

² Judge McCarthy provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, objections to the R&R were due within fourteen days from the receipt of the R&R, and that the failure to object would constitute a waiver of either Parties’ right to raise any objections to this R&R on appeal. (See R&R 9–10.)

It is hereby ORDERED that the Report and Recommendation, dated June 27, 2024, is ADOPTED in its entirety. Accordingly, the motion for approval of attorneys' fees is granted in part in the amount of \$15,150.00 and Mr. Bowes is directed to refund \$1,400 to Plaintiff. The Clerk of the Court is respectfully directed terminate the pending motion at Dkt. No. 14.

SO ORDERED.

Dated: September 30, 2024
White Plains, New York



KENNETH M. KARAS
United States District Judge